Plea Bargaining in India- A Evaluation

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ABSTRACT
Plea bargaining as a concept was introduced in Indian criminal justice system by the Criminal Laws (Amendment) Act, 2005, on the recommendation of Malimath Committee. Ever since its introduction, the concept has been a subject of debate. While some criticize it on the ground that it violates fundamental rights of the accused, others hail it as instrumental in ensuring speedy disposal of cases. In this light, the paper throws light on the relevant provisions relating to Plea Bargaining in Indian criminal law as well as judicial attitude towards this concept.

Keywords - Fundamental rights and criminal law.

I INTRODUCTION

One of the alternatives being considered to deal with the huge arrears of criminal cases is introduction of the system of plea bargaining in India, This process though so far not known in this country has been used in USA. and England. Before the system of plea bargaining is engrafted on the Indian Criminal Justice System it will be useful to study this process as used in those countries and to consider the likely impact of the process in Indian conditions. Plea bargaining has been practiced in the corridors of the English courts for almost three hundred years. Yet the courts do not officially recognise its existence, even today. The White Paper on Criminal Justice in England and Wales issued on February 6, 1990 does not even mention it. In America this process has been used for about a century but was officially taken notice of only about 20 years back.1 Earlier its practice was an ill kept secret from the court as in England. Whenever the courts officially noticed its use, it was adversely commented upon.

II PLEA BARGAINING

(a) Definition

Wikipedia defines the term as "A plea bargain (also plea agreement, plea deal or copping a plea) is any agreement in a criminal case between the prosecutor and defendant whereby the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor.
"Albert W. Alshuler defines plea bargaining as follows: "Plea-bargaining consists of the exchange of official concessions for a defendant's act of self-conviction. Those concessions may relate to the sentence imposed by the Court or recommended by the prosecutor the offence charged, or a variety of other circumstances.

As per Chief Justice of Supreme Court of United States, Warren Burger in Santobello v. New York. "Plea bargaining is an essential component of the administration of justice, properly administered, it is to be encouraged. It leads to prompt and largely final disposition of most criminal cases."
N. M. Isakov and Dirk Van Zylsmit,28 on the other hand, refer to the process as:
"the practice of relinquishing the right to go to trial in exchange for a reduction in charge and/or sentence."
From these definitions the following elements may be distilled:

(i) a mutually satisfactory disposition;
(ii) judicial review
(iii) a concession of some kind, made by the prosecuting authority

(b) Origin

The practice of "Plea-bargaining" in America goes back a century or more. One study found it, for example, in Alameda County, California, in about the 1880s. Judges in the County even talked about the way they gave credit for guilty please. "Plea-bargaining" was not as pervasive as it is now…. Not even close to it…., but it was by no means rare. Extent of prevalence—Entering a guilty plea is greatly prevalent in many American States. In 1839, in New York State, one out of every four criminal cases ended with a guilty plea. By the middle of the century, one out of three felony defendants pleaded guilty. In 1920s guilty pleas accounted for 88 out of 100 convictions in New York City, 85 out of 100 in Chicago, 70 out of 100 in Dallas and 79 out of 100 in Des Moines, Iowa. It has kept its dominance ever since. In short, one can trace a steady and marked decline in number of trials by jury in America from the early 19th century on.

(c) Types of Plea Bargaining

Plea bargaining can mainly be classified into three types:

(i) **Charge Bargaining -** This is common and widely known form of plea. It involves a negotiation of the specific charges (counts) or crimes that the defendants will face at trial. Usually, in return for a plea of 'guilty' to a lesser charge, a prosecutor will dismiss the

higher or other charge(s) counts. For example: A defendant charged with burglary may be offered the opportunity to plead guilty to attempt burglary.

(ii) **Sentence Bargaining-** Sentence bargaining involves the agreement to a plea of guilty (for the sated charge rather than a reduced charge) in return for a lighter sentence. It sources the prosecution the necessity of going through trial and proving its case. It provides the defendant with a opportunity for a lighter sentence.

(iii) **Fact Bargaining-**The least used negotiation involves an admission to certain facts ("stipulating" to the truth and existence of provable facts, thereby eliminating the need for the prosecutor to have to prove them) in return for an agreement not to introduce certain other facts into evidence.

(d) Provision related to plea bargaining in India

Chapter XXI A, of the Code of Criminal Procedure, 1973 allows plea bargaining to be used in criminal cases where:

(i) Offences that are penalized by imprisonment below seven years.

(ii) If the accused has been previously convicted of a similar offence by any court, then he/she will not to be entitled to plea-bargaining.

(iii) Plea-bargaining is not available for offences which might affect the socio-economic conditions of the country.

(iv) Also, plea-bargaining is not available for an offence committed against a woman or a child below fourteen years of age.

III PROCEDURE OF PLEA BARGAINING

The process of plea bargaining was brought in as a result of criminal law reforms introduced in 2005 Section 4 of the Amendment Act introduced Chapter XXIA to the Code having sections 265 A to 265 L which came into effect on 5th July, 2006.The following are the procedure of plea bargaining available to the accused under the Criminal Procedure Code, 1973:-

Section 265-A It states that, the plea bargaining shall be available to the accused charged of any offence other than offences punishable with death or imprisonment or for life or of an imprisonment for a term exceeding seven years. Section 265 A (2) of the Code gives power to notify the offences to the Central Government..

Section 265-B- It provides that ,an application for plea bargaining shall be filed by the accused which shall state description of the case .The plea bargaining in his case and that he has not previously been convicted by a court in a case in which he had been charged with the same offence.

Section 265-C- This section prescribes the procedure to be followed by the court in working out a mutually satisfactory disposition. In a complaint case, the Court shall issue notice to the accused and the victim of the case.

Section 265-D- It deals with the preparation of the report by the court as to the arrival of a mutually satisfactory disposition or failure of the same.

Section 265-E-It prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out.

Section 265-F-It deals with the pronouncement of judgment in terms of such mutually satisfactory disposition.

Section 265-G - says that no appeal shall lie against such judgment.

Section 265-H- deals with the powers of the court in plea bargaining. A court for the purposes of discharging its functions under Chapter XXI-A, shall have all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case .

Section 265-I -makes Section 428 applicable to the sentence awarded on plea bargaining.

Section 265-J-contains a non obstante clause that the provisions of the chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code and nothing in such other provisions shall be construed to contain the meaning of any provision of chapter XXI-A.

Section 265-K-It says that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose of the chapter.

Section 265-L-It makes the chapter not applicable in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

IV CASE LAW

(a) Murlidhar Meghraj Loya v. State of Maharashtra; AIR 1976 SC 1929- The court held that- "It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction, especially in the area of dangerous economic crimes and food

offences, this practice intrudes on society's interests by opposing society's decision expressed through predetermined legislative fixation of minimum sentences and by subtly subverting the mandate of the law." In this case, the Supreme Court observed that a streamlined procedure should be devised if the state was to administer justice by having recourse to plea bargaining.

(b) **Kasambhai Abdul Rehman Bhai Sheikh v. State of Gujarat; (1980) 3 SCC 120**
The court held that- "the practice of Plea Bargaining was unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice."

(c) **Uttar Pradesh v. Chandrika; AIR 2000 SC 164 - T**he court held that- "it is settled law that on the basis of plea bargaining Court cannot dispose of the criminal cases. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the Court that as he is pleading guilty sentence be reduced." Keeping in view the huge arrears and inordinate delays in disposal of criminal cases and on the recommendations of the Malimath Committee, a new chapter XXI-A of Plea Bargaining has been added to the Code of Criminal Procedure.

V EXCEPTIONS TO PLEA BARGAINING

Under the Indian Penal Code, 1860, offences under Section 115, 119, 302, 304, 304-B, 305, 307, 498, 498A and various other offences where plea-bargaining is not applicable. Offences affecting the Socio-economic condition, like Dowry Prohibition Act 1961, The Commission of Sati Prevention Act, 1987, The Immoral Traffic (Prevention) Act, 1956, The Army Act, 1950, The Explosives Act, 1884 etc. are also excluded from the purview of plea-bargaining.

VI CONCLUSION & SUGGESTIONS

(a) **Conclusion-**Though, the introduction of 'plea bargaining in Indian judicial system' has profoundly been criticized by a group of society including intellectual and legal experts with the argument that it will demoralize the public confidence in criminal justice system. On the other hand, plea bargaining concept has been welcomed by the other groups of society as a revolutionary judicial reform in India, We hope that the overburdened criminal courts of India will get a relief with the law of 'plea bargaining' and the criminal judicial system will also speed up its disposal of the pending cases.

(b) **Suggestions-**After studying the concept of plea-bargaining in India and its comparative study, the researcher has been able to point out some suggestions on the law of plea bargaining. Some of them are-

(i) In order to implement plea bargaining successfully, first thing which is required is to spread awareness of this provision among the stakeholders in the criminal justice system.

(ii) The accused has do not that he has this right. Therefore, summons to an accused in all cases to which plea bargaining is attracted must contain this information that he is entitled to take the benefit of this system. For that the statutory format of summons may be alerted.

(iii) The awareness programme should be held in jail among trial prisoners who can come within the purview of Chapter XXI-A of the Code. If this is done, this will help decongest the overpopulated jails all over the country.

(iv) There is a greater chance of success in the plea bargaining programme, if it is first implemented in cases of persons who are already in custody and in respect of those offences which carry a maximum sentence of upto three years.

(v) In order to successfully carry out this awareness programme, the Probation Officers, Welfare Officers of the jail and the Superintendent of Jails must be involved to conduct the programme among the under trial prisoners so that they may get "the informed knowledge" to take the benefit of the system.

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